

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NAVIN CHADDHA

Appeal No. 2001-0565
Application 08/855,246

ON BRIEF

Before HAIRSTON, RUGGIERO and LEVY, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 28 and 30 through 44.

The disclosed invention relates to method and apparatus for streaming data to first and second multicast groups.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. In a server coupled to at least one client computer via a network, a method for streaming data to a first multicast group and a second multicast group, said method comprising:

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streaming a first base layer and a first at least one enhancement layer of said data to said first multicast group, said first at least one enhancement layer additive to said first base layer; and

streaming a second base layer and a second at least one enhancement layer of said data to said second multicast group, said second at least one enhancement layer additive to said second base layer.

The references relied on by the examiner are:

Chaddha et al. (Chaddha)	5,621,660	Apr. 15, 1997
Tomoda et al. (Tomoda)	5,832,229	Nov. 3, 1998
	(filed July 26, 1996)	

Claims 1 through 28 and 30 through 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tomoda in view of Chaddha.

Reference is made to the final rejection (paper number 9), the briefs (paper numbers 14 and 16) and the answer (paper number 15) for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejection of claims 1 through 28 and 30 through 44.

Tomoda discloses a multicast communication system in which a user at a terminal 101 joins or leaves a multicast group (Figure 1; column 1, lines 11 through 15). The regions 204 through 206

are in a virtual space, and they correspond to separate multicast groups. The user joins or leaves a multicast group by positioning the icon 207 within one of the regions (column 6, lines 55 through 62; column 9, lines 16 through 23).

The examiner acknowledges (answer, page 5) that "Tomoda does not explicitly teach the claimed limitation of streaming a first base layer and a first at least one enhancement layer of said data, said first at least one enhancement layer additive to said first base layer."

Chaddha discloses a base layer and first and second enhancement layers, and "[c]ollectively the base layer, and first and second enhancement layers comprise the single embedded bitstream that may be multicast over heterogeneous networks" (column 3, lines 21 through 26).

The examiner further acknowledges (answer, page 5) that "Tomoda and Chaddha do not explicitly disclose the claimed limitation wherein said first base layer is different from said second base layer, and said first at least one enhancement layer is different from said second at least one enhancement layer."

In view of the noted teachings of Tomoda and Chaddha, and the acknowledged shortcomings in the teachings of these references, we find that the examiner's conclusions (answer,

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pages 5 through 16) hold little, if any, weight with respect to the issue of obviousness of the claimed subject matter. Stated differently, the examiner's reasoning and unsupported conclusions can not take the place of an evidentiary showing in the record of the obviousness of the claimed subject matter. In the absence of such an evidentiary showing, we agree with appellant's argument (reply brief, pages 1 through 3) that the examiner has resorted to impermissible hindsight to demonstrate the obviousness of the claimed subject matter.

DECISION

The decision of the examiner rejecting claims 1 through 28 and 30 through 44 under 35 U.S.C. § 103(a) is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
)	
)	
)	
JOSEPH F. RUGGIERO)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
STUART S. LEVY)	
Administrative Patent Judge)	

KWH:svt

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